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7 UNITED STATES DISTRICT COURT
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9 SOUTHERN DISTRICT OF CALIFORNIA
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10 ESTATE OF GERARDO VALENTINEZ,) Case No. 08CV0781BEN(WMC)
11 et al.,)
11 Plaintiffs,)
12 v.) UNITED STATES OF AMERICA'S
12) ANSWER TO COMPLAINT
13 UNITED STATES OF AMERICA,)
14 et al.,)
14 Defendants.)
15 _____)

16 COMES NOW Defendant United States of America, by and through its
17 attorneys, Karen P. Hewitt, United States Attorney, and Richard
18 Tolles, Assistant U.S. Attorney, and in answer to Plaintiffs'
19 complaint states as follows:

20 1. Answering Paragraph 1 of the complaint, defendant alleges
21 that the allegations therein constitute plaintiffs' characterization
22 of their claim or legal conclusions to which no answer is required.
23 To the extent an answer is required said allegations are denied.

24 2. Answering Paragraph 2 of the complaint, defendant alleges
25 that said paragraph contains legal conclusions and questions of law
26 to be determined solely by the Court, and to which no answer is
27 required. To the extent an answer is required, defendant denies each,
28 all, and every allegation contained therein.

1 3. Answering the allegations contained in paragraph 3 of the
2 complaint, this paragraph contains conclusions of law to which no
3 answer is required. To the extent that a response to these
4 allegations is deemed necessary, defendant admits that plaintiffs'
5 claims were timely and are deemed denied.

6 4. Answering Paragraph 4 of the complaint, this paragraph
7 contains conclusions of law to which no answer is required. To the
8 extent that a response to these allegations is deemed necessary,
9 defendant admits that plaintiffs' claims were timely and are deemed
10 denied

11 5. Answering Paragraph 5 of the complaint, defendant alleges
12 that the allegations therein constitute plaintiffs' characterization
13 of their claim or legal conclusions to which no answer is required.
14 To the extent an answer is required said allegations are denied.

15 6. Answering Paragraph 6 of the complaint, defendant alleges
16 that it is without knowledge or information sufficient to form a
17 belief as to the truth of the allegations therein contained and based
18 thereon denies, generally and specifically, each, all and every
19 allegation contained therein.

20 7. Answering the allegations contained in paragraph 7 of the
21 complaint, defendant admits that the Department of Homeland Security
22 is a federal department within defendant and that U.S. Customs and
23 Border Protection, an agency within the Department of Homeland
24 Security, conducts operations in San Diego, California.

25 8. Answering the allegations contained in paragraph 8 of the
26 Complaint, defendant is without knowledge or information sufficient
27 to form a belief as to the truth of the factual allegations in this
28 paragraph and, on the basis of such lack of information and belief,

1 denies each and every allegation in paragraph 8. To the extent that
2 plaintiff requests leave to amend plaintiffs' complaint, defendant
3 objects to same.

4 9. Answering the allegations contained in paragraph 9 of the
5 Complaint, this paragraph contains conclusions of law and a
6 characterization of the nature of this action to which no answer is
7 required. To the extent that a response to these allegations is
8 deemed necessary, defendant denies, generally and specifically, each
9 and every allegation in paragraph 9 of the Complaint.

10 10. Answering the allegations contained in paragraph 10 of the
11 Complaint, defendant herein incorporates all of his previous responses
12 to plaintiffs' paragraphs 1 through 9 of the Complaint.

13 11. Answering the allegations contained in paragraph 11 of the
14 Complaint, defendant admits that on March 27, 2008, Gerardo Valentinez
15 was detained by U.S. Customs and Border Protection at the San Ysidro
16 Port of Entry.

17 12. Answering the allegations contained in paragraph 12 of the
18 Complaint, defendant denies, generally and specifically, each and
19 every allegation in paragraph 12 of the Complaint.

20 13. Answering the allegations contained in paragraph 13 of the
21 Complaint, defendant admits that one officer got Gerardo Valentinez
22 in a headlock from behind. Defendant denies each and every remaining
23 allegation in Paragraph 13 of the Complaint.

24 14. Answering the allegations contained in paragraph 14 of the
25 Complaint, defendant denies that Gerardo Valentinez could not breath
26 but admits that one officer heard him gag.

27 15. Answering the allegations contained in paragraph 15 of the
28 Complaint, defendant denies said allegations except that it is

1 admitted that an officer used his boot in contact with the upper
2 torso, including the neck area at one point, in the effort to prevent
3 Gerardo Valentinez from injuring himself or others.

4 16. Answering the allegations contained in paragraph 16 of the
5 Complaint, defendant denies, generally and specifically, each and
6 every allegation in paragraph 16 of the Complaint.

7 17. Answering the allegations contained in paragraph 17 of the
8 Complaint, defendant admits that an officer put his knee on Mr.
9 Valentinez' head. Defendant denies that another agent placed her foot
10 on Mr. Valentinez' neck and denies each and every remaining allegation
11 of Paragraph 17.

12 18. Answering the allegations contained in paragraph 18 of the
13 Complaint, defendant admits that at some point pressure point
14 compliance was applied in the jaw area.

15 19. Answering the allegations contained in paragraph 19 of the
16 Complaint, defendant denies, generally and specifically, each and
17 every allegation in paragraph 19 of the Complaint.

18 20. Answering the allegations contained in paragraph 20 of the
19 Complaint, defendant denies, generally and specifically, each and
20 every allegation in paragraph 20 of the Complaint.

21 21. Answering the allegations contained in paragraph 21 of the
22 Complaint, defendant admits that several U.S. Customs and Border
23 Protection officers were involved in apprehending Gerardo Valentinez.
24 Defendant denies, generally and specifically, each and every remaining
25 allegation in paragraph 21 of the Complaint.

26 22. Answering the allegations contained in paragraph 22 of the
27 Complaint, defendant admits that Gerardo Valentinez's wrists were
28 handcuffed behind his back. Defendant denies, generally and

1 specifically, each and every remaining allegation in paragraph 22 of
2 the Complaint.

3 23. Answering the allegations contained in paragraph 23 of the
4 Complaint, defendant admits that a leash was used to restrain Gerardo
5 Valentinez's ankles and was looped through a handcuff. Defendant
6 denies that leg irons had already been applied.

7 24. Answering the allegations contained in paragraph 24 of the
8 Complaint, defendant denies, generally and specifically, each and
9 every allegation in paragraph 24 of the Complaint.

10 25. Answering the allegations contained in paragraph 25 of the
11 Complaint, defendant admits that Gerardo Valentinez was placed on a
12 Cushman vehicle. Defendant denies, generally and specifically, each
13 and every remaining allegation in paragraph 25 of the Complaint.

14 26. Answering the allegations contained in paragraph 26 of the
15 Complaint, defendant admits that CPR was not provided to Gerardo
16 Valentinez while he was on the Cushman vehicle.

17 27. Answering the allegations contained in paragraph 27 of the
18 Complaint, defendant admits that Gerardo Valentinez was transported
19 to the security office at the San Ysidro port of entry on the Cushman
20 vehicle.

21 28. Answering the allegations contained in paragraph 28 of the
22 Complaint, defendant denies, generally and specifically, each and
23 every allegation in paragraph 28 of the Complaint.

24 29. Answering the allegations contained in paragraph 29 of the
25 Complaint, defendant admits that Gerardo Valentinez was carried into
26 a detention cell. Defendant denies, generally and specifically, each
27 and every remaining allegation in paragraph 29 of the Complaint.

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1 30. Answering the allegations contained in paragraph 30 of the
2 Complaint, defendant admits that Gerardo Valentinez's ankle restraints
3 were removed.

4 31. Answering the allegations contained in paragraph 30 of the
5 Complaint, defendant objects that this allegation is so general that
6 no answer is required. To the extent answer is required, defendant
7 denies this allegation.

8 32. Answering the allegations contained in paragraph 32 of the
9 Complaint, defendant admits that Gerardo Valentinez was moved to a
10 second detention cell. Defendant denies, generally and specifically,
11 each and every remaining allegation in paragraph 32 of the Complaint.

12 33. Answering the allegations contained in paragraph 33 of the
13 Complaint, defendant admits that one officer believed that Gerardo
14 Valentinez's pupils had become fixed, that CPR was provided, and that
15 911 emergency services were called. Defendant denies, generally and
16 specifically, each and every remaining allegation in paragraph 33 of
17 the Complaint.

18 34. Answering the allegations contained in paragraph 34 of the
19 Complaint, defendant admits that Gerardo Valentinez's autopsy report
20 indicates that he sustained multiple blunt force injuries, including
21 multiple abrasions to the face, scalp, and body. Defendant otherwise
22 denies the allegations of Paragraph 34 of the Complaint.

23 35. Answering the allegations contained in paragraph 35 of the
24 Complaint, defendant admits that Gerardo Valentinez was pronounced
25 dead at some point, that Gerardo Valentinez's autopsy report indicates
26 that the cause of death was neck compression and prone restraint, and
27 that Gerardo Valentinez's autopsy report indicates that the manner of
28 death was homicide.

1 36. Answering the allegations contained in paragraph 36 of the
2 Complaint, defendant is without knowledge or information sufficient
3 to form a belief as to the truth of the factual allegations in this
4 paragraph and, on the basis of such lack of information and belief,
5 denies each and every allegation in paragraph 36.

6 37-48. Answering the allegations contained in Paragraphs 37-48
7 of the Complaint, Defendant alleges that such allegations are not
8 directed to this answering Defendant. To the extent an answer is
9 required of this Defendant to those allegations, they are denied.

10 49. Answering the allegations contained in paragraph 49 of the
11 Complaint, defendant herein incorporates all of his previous responses
12 to plaintiffs' paragraphs 1 through 48 of the Complaint.

13 50. Answering the allegations contained in paragraph 50 of
14 the Complaint, this paragraph contains conclusions of law and a
15 characterization of the nature of this action to which no answer is
16 required. To the extent that a response to these allegations is
17 deemed necessary, defendant denies, generally and specifically, each
18 and every allegation in paragraph 50.

19 51. Answering the allegations contained in paragraph 51 of
20 the Complaint, this paragraph contains conclusions of law and a
21 characterization of the nature of this action to which no answer is
22 required. To the extent that a response to these allegations is
23 deemed necessary, defendant denies, generally and specifically, each
24 and every allegation in paragraph 51.

25 52. Answering the allegations contained in paragraph 52 of the
26 Complaint, this paragraph contains conclusions of law and a
27 characterization of the nature of this action to which no answer is
28 required. To the extent that a response to these allegations is

1 deemed necessary, defendant denies, generally and specifically, each
2 and every allegation in paragraph 52.

3 53. Answering the allegations contained in paragraph 53 of the
4 Complaint, this paragraph contains conclusions of law and a
5 characterization of the nature of this action to which no answer is
6 required. This paragraph also concerns plaintiff's prayer for relief,
7 and thus, no response is required. To the extent that a response to
8 these allegations is deemed necessary, defendant denies, generally and
9 specifically, each and every allegation in paragraph 53.

10 54. Answering the allegations contained in paragraph 54 of the
11 Complaint, defendant herein incorporates all of his previous responses
12 to plaintiffs' paragraphs 1 through 53 of the Complaint.

13 55. Answering the allegations contained in paragraph 55 of the
14 Complaint, defendant denies, generally and specifically, each and
15 every allegation in paragraph 55 of the Complaint.

16 56. Answering the allegations contained in paragraph 56 of the
17 Complaint, this paragraph contains conclusions of law and a
18 characterization of the nature of this action to which no answer is
19 required. To the extent that a response to these allegations is
20 deemed necessary, defendant denies, generally and specifically, each
21 and every allegation in paragraph 56.

22 57. Answering the allegations contained in paragraph 57 of the
23 Complaint, defendant is without knowledge or information sufficient
24 to form a belief as to the truth of the factual allegations in this
25 paragraph and, on the basis of such lack of information and belief,
26 denies each and every allegation in paragraph 57.

27 58. Answering the allegations contained in paragraph 58 of the
28 Complaint, this paragraph contains conclusions of law and a

1 characterization of the nature of this action to which no answer is
2 required. This paragraph also concerns plaintiff's prayer for relief,
3 and thus, no response is required. To the extent that a response to
4 these allegations is deemed necessary, defendant denies, generally and
5 specifically, each and every allegation in paragraph 58.

6 59. Answering the allegations contained in paragraph 59 of the
7 Complaint, defendant herein incorporates all of his previous responses
8 to plaintiffs' paragraphs 1 through 58 of the Complaint.

9 60. Answering the allegations contained in paragraph 60 of the
10 Complaint, defendant denies, generally and specifically, each and
11 every allegation in paragraph 60 of the Complaint.

12 61. Answering the allegations contained in paragraph 61 of the
13 Complaint, defendant denies, generally and specifically, each and
14 every allegation in paragraph 61 of the Complaint.

15 62. Answering the allegations contained in paragraph 62 of the
16 Complaint, defendant denies, generally and specifically, each and
17 every allegation in paragraph 62 of the Complaint.

18 63. Answering the allegations contained in paragraph 63 of the
19 Complaint, this paragraph contains conclusions of law and a
20 characterization of the nature of this action to which no answer is
21 required. To the extent that a response to these allegations is
22 deemed necessary, defendant denies, generally and specifically, each
23 and every allegation in paragraph 63.

24 64. Answering the allegations contained in paragraph 64 of the
25 Complaint, defendant denies, generally and specifically, each and
26 every allegation in paragraph 64 of the Complaint.

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1 65. Answering the allegations contained in paragraph 65 of the
2 Complaint, defendant denies, generally and specifically, each and
3 every allegation in paragraph 65 of the Complaint.

4 66. Answering the allegations contained in paragraph 66 of the
5 Complaint, this paragraph contains conclusions of law and a
6 characterization of the nature of this action to which no answer is
7 required. This paragraph also concerns plaintiff's prayer for relief,
8 and thus, no response is required. To the extent that a response to
9 these allegations is deemed necessary, defendant denies, generally and
10 specifically, each and every allegation in paragraph 66.

11 67. Answering the allegations contained in paragraph 67 of the
12 Complaint, defendant herein incorporates all of his previous responses
13 to plaintiffs' paragraphs 1 through 66 of the Complaint.

14 68. Answering the allegations contained in paragraph 68 of the
15 Complaint, this paragraph contains conclusions of law and a
16 characterization of the nature of this action to which no answer is
17 required. To the extent that a response to these allegations is
18 deemed necessary, defendant denies, generally and specifically, each
19 and every allegation in paragraph 68.

20 69. Answering the allegations contained in paragraph 69 of the
21 Complaint, this paragraph contains conclusions of law and a
22 characterization of the nature of this action to which no answer is
23 required. To the extent that a response to these allegations is
24 deemed necessary, defendant denies, generally and specifically, each
25 and every allegation in paragraph 69.

26 70. Answering the allegations contained in paragraph 70 of the
27 Complaint, this paragraph contains conclusions of law and a
28 characterization of the nature of this action to which no answer is

1 required. This paragraph also concerns plaintiff's prayer for relief,
2 and thus, no response is required. To the extent that a response to
3 these allegations is deemed necessary, defendant denies, generally and
4 specifically, each and every allegation in paragraph 70.

5 71. Answering the allegations contained in paragraph 71 of the
6 Complaint, this paragraph contains conclusions of law and a
7 characterization of the nature of this action to which no answer is
8 required. This paragraph also concerns plaintiff's prayer for relief,
9 and thus, no response is required. To the extent that a response to
10 these allegations is deemed necessary, defendant denies, generally and
11 specifically, each and every allegation in paragraph 71.

12 72. Answering the allegations contained in paragraph 72 of the
13 Complaint, defendant herein incorporates all of his previous responses
14 to plaintiffs' paragraphs 1 through 71 of the Complaint.

15 73. Answering the allegations contained in paragraph 73 of the
16 Complaint, this paragraph contains conclusions of law and a
17 characterization of the nature of this action to which no answer is
18 required. To the extent that a response to these allegations is
19 deemed necessary, defendant denies, generally and specifically, each
20 and every allegation in paragraph 73.

21 74. Answering the allegations contained in paragraph 74 of the
22 Complaint, this paragraph contains conclusions of law and a
23 characterization of the nature of this action to which no answer is
24 required. To the extent that a response to these allegations is
25 deemed necessary, defendant denies, generally and specifically, each
26 and every allegation in paragraph 74.

27 75. Answering the allegations contained in paragraph 75 of
28 the Complaint, this paragraph contains conclusions of law and a

1 characterization of the nature of this action to which no answer is
2 required. This paragraph also concerns plaintiff's prayer for relief,
3 and thus, no response is required. To the extent that a response to
4 these allegations is deemed necessary, defendant denies, generally and
5 specifically, each and every allegation in paragraph 75.

6 76. Answering the allegations contained in paragraph 76 of the
7 Complaint, defendant herein incorporates all of his previous responses
8 to plaintiffs' paragraphs 1 through 75 of the Complaint.

9 77. Answering the allegations contained in paragraph 77 of the
10 Complaint, this paragraph contains conclusions of law and a
11 characterization of the nature of this action to which no answer is
12 required. To the extent that a response to these allegations is
13 deemed necessary, defendant denies, generally and specifically, each
14 and every allegation in paragraph 77.

15 78. Answering the allegations contained in paragraph 78 of the
16 Complaint, this paragraph contains conclusions of law and a
17 characterization of the nature of this action to which no answer is
18 required. To the extent that a response to these allegations is
19 deemed necessary, defendant denies, generally and specifically, each
20 and every allegation in paragraph 79.

21 79. Answering the allegations contained in paragraph 79 of the
22 Complaint, this paragraph contains conclusions of law and a
23 characterization of the nature of this action to which no answer is
24 required. This paragraph also concerns plaintiff's prayer for relief,
25 and thus, no response is required. To the extent that a response to
26 these allegations is deemed necessary, defendant denies, generally and
27 specifically, each and every allegation in paragraph 79.

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1 80. Answering the allegations contained in paragraph 80 of the
2 Complaint, defendant herein incorporates all of his previous responses
3 to plaintiffs' paragraphs 1 through 79 of the Complaint.

4 81. Answering the allegations contained in paragraph 81 of the
5 Complaint, this paragraph contains conclusions of law and a
6 characterization of the nature of this action to which no answer is
7 required. To the extent that a response to these allegations is
8 deemed necessary, defendant denies, generally and specifically, each
9 and every allegation in paragraph 81.

10 82. Answering the allegations contained in paragraph 82 of the
11 Complaint, this paragraph contains conclusions of law and a
12 characterization of the nature of this action to which no answer is
13 required. To the extent that a response to these allegations is
14 deemed necessary, defendant denies, generally and specifically, each
15 and every allegation in paragraph 82.

16 The remainder of the Complaint is plaintiffs' prayer for relief,
17 and thus, no response is required. To the extent that any response
18 is required, defendant denies each and every remaining allegation of
19 the Complaint.

20 ADDITIONAL AND AFFIRMATIVE DEFENSES

21 All allegations not here before specifically admitted, denied,
22 or modified, are hereby denied. For further and separate answer,
23 Defendant United States of America alleges as follows:

24 1. The Court lacks jurisdiction over the subject matter of this
25 action.

26 2. The complaint fails to state a claim upon which relief can
27 be granted to the plaintiffs against defendant United States under the
28 Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-80, as

1 averred in the complaint or otherwise, for the reason that if
2 defendant were a private person, it would not be liable to plaintiffs
3 in accordance with the law of the State of California.

4 3. The United States has not waived its sovereign immunity to
5 damages suits alleging constitutional violations, and the United
6 States may not be held liable based upon such allegations.

7 4. Plaintiffs' Third Cause of Action fails to state a claim
8 against the United States because it is based on alleged
9 constitutional violations.

10 5. Plaintiffs' Fourth Cause of Action fails to state a claim for
11 wrongful death because the facts alleged do not suggest that
12 defendant's employees acted wrongfully.

13 6. Plaintiffs' Fifth Cause of Action fails to state a claim
14 against the United States because it is based on alleged
15 constitutional violations and/or standards for municipal liability
16 that do not apply to the United States.

17 7. Plaintiffs' Sixth Cause of Action fails to state a claim for
18 assault and battery because the acts alleged were privileged since
19 performed in self-defense and defense of others.

20 8. Plaintiffs' Seventh Cause of Action fails to state a claim
21 for intentional infliction of emotional distress.

22 9. Plaintiffs' Eighth Cause of Action fails to state a claim for
23 negligence because the force used was appropriate under the
24 circumstances alleged.

25 10. Plaintiffs' Ninth Cause of Action fails to state a claim for
26 negligent infliction of emotional distress because the elements
27 required by Thing v. La Chusa, 48 Cal. 3d 644 (1980) are not alleged.

1 11. Plaintiffs' survival action fails to state a claim under
2 Cal. Code. Civ. P. § 377.34 in that no damages recoverable under that
3 statute are alleged.

4 12. Plaintiffs' decedent had knowledge of and voluntarily
5 assumed the risk of all that transpired.

6 13. Any injury or injuries sustained by plaintiffs were caused
7 in whole or in part by and through the carelessness and negligence of
8 plaintiffs' decedent.

9 14. Plaintiffs' decedent was subject to lawful Customs
10 inspection by defendant's employees at the San Ysidro Port of Entry.

11 15. Plaintiffs' decedent unlawfully fled on foot from secondary
12 inspection because he knew he was smuggling illegal aliens in his
13 vehicle and/or because he was under the influence of illegal
14 substances drugs and alcohol and/or because he wished to unlawfully
15 reenter Mexico.

16 16. Plaintiffs' decedent breached his duty to refrain from
17 resisting the lawful directives of law enforcement officers.

18 17. Plaintiffs' decedent unlawfully resisted, by use of force,
19 the efforts of defendant's employees to restrain and control him.

20 18. Plaintiffs' decedent unlawfully assaulted and battered
21 defendant's employees.

22 19. Plaintiffs' decedent caused the harm complained of
23 intentionally or recklessly because he was under the influence illegal
24 substances and alcohol and/or because he simply wish to physically
25 injure the law enforcement officers who were attempting to restrain
26 him.

27 20. Plaintiffs cannot recover for wrongful death because the
28 acts of defendant's employees were lawful, privileged and justified.

1 21. The use of force by defendants employees was privileged
2 because the unlawful acts of plaintiffs' decedent put them in fear of
3 death or serious bodily harm.

4 22. As law enforcement officers, defendant's employees were
5 entitled to use such force as was reasonably necessary to apprehend
6 plaintiffs' decedent and to defend themselves from physical attack.

7 23. The seizure of plaintiffs' decedent and the use of force
8 alleged in the complaint were made/used under exigent circumstances.

9 24. The acts or omissions of others, which were the sole
10 proximate causes of any injury, damage, or loss to the plaintiffs,
11 superseded any act or omissions of defendant.

12 25. The injuries and damages alleged by plaintiffs were not
13 proximately caused by a negligent or wrongful act or omission on the
14 part of any employee or agent of the United States of America.

15 26. The liability of defendant, if any, and responsible parties,
16 named or unnamed, if any, should be apportioned according to their
17 respective degrees of fault, and any liability should be reduced
18 accordingly.

19 27. Defendant asserts, as an affirmative defense, California
20 Civil Code, § 1431.2(a), which provides:

21 In any action for personal injury, property
22 damage, or wrongful death, based upon principles
23 of comparative fault, the liability of each
24 defendant for non-economic damages shall be
25 several only and shall not be joint. Each
26 defendant shall be liable only for the amount of
non-economic damages allocated to that defendant
in direct proportion to that defendant's
percentage of fault, and a separate judgment
shall be rendered against that defendant for that
amount.

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1 28. Plaintiffs' recovery, if any, is limited to the amount of
2 the claim the plaintiffs presented administratively. See 28 U.S.C.
3 § 2675(b).

4 29. Plaintiffs have alleged only speculative future damages that
5 do not constitute compensable damages.

6 30. All future damages, if any, must be reduced to present
7 value.

8 31. Income taxes must be deducted from the alleged past and
9 future lost earnings, if any.

10 32. In the event defendant is found liable, which defendant
11 expressly denies, defendant is entitled to an offset against damages,
12 if any, for all amounts received by plaintiffs from the United States
13 of America and its agencies, and also from all collateral sources, by
14 reason of plaintiffs' alleged injuries.

15 33. Plaintiffs are not entitled to general or punitive damages
16 from defendant United States.

17 34. Plaintiff is not entitled to prejudgment interest from
18 defendant United States.

19 35. The complaint fails to state a claim for injunctive or
20 declaratory relief.

21 36. Plaintiffs are not entitled to a jury trial against the
22 United States. 28 U.S.C. § 2402.

23 WHEREFORE, defendant, having fully answered plaintiffs' complaint
24 filed herein, prays that plaintiffs take nothing by reason of their
25 suit herein, that judgment be rendered in favor of defendant, for
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27
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1 costs of suit herein incurred, and for such other and further relief
2 as this Court may deem proper.

3 DATED: July 29, 2008

4 Respectfully submitted,

5 KAREN P. HEWITT
6 United States Attorney

7 S/
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9 RICHARD TOLLES
10 Assistant U.S. Attorney
11 Attorneys for Defendant
12 United States of America

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